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7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 UNIVERSAL SELF CARE, INC.
dba HOME THERAPY SERVICES CO-OP
13715 Burbank Boulevard
Van Nuys, CA 91401

14 Original Pharmacy Permit No. PHY 37429

15 ROSENBERG ETTIE KAUFMAN
219 N. Elm Drive
Beverly Hills, CA 90210

16 Original Licentiate No. RPH-33408

17 and

18 PAUL MEYER WASSERMAN
517 N. Bedford Drive
Beverly Hills, CA 90210

19 Original Licentiate No. RPH-14002

20 Respondents.

Case No. 1903

21 **DEFAULT DECISION**
22 **AND ORDER REGARDING**
23 **RESPONDENT UNIVERSAL SELF**
24 **CARE, INC., dba HOME THERAPY**
25 **CO-OP**

[Government Code § 11520]

26 FINDINGS OF FACT

27 1. On or about August 7, 1998, Complainant Patricia F. Harris, in her official
28 capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State
of California, filed Accusation No. 1903 against Universal Self Care, Inc., dba Home Therapy
Services Co-op, ("Respondent") before the Board of Pharmacy ("Board").

1 2. On or about June 4, 1992, the Board of Pharmacy issued Original
2 Pharmacy Permit Number PHY 37429 to Respondent. The Original Pharmacy Permit expired
3 on June 1, 1997, and has not been renewed.

4 3. On or about August 20, 1998, Thomas Buck, an employee of the
5 Department of Justice, served by Certified Mail a copy of the Accusation No. 1903, Statement to
6 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
7 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 13715
8 Burbank Boulevard, Van Nuys, CA 91401. A copy of the Accusation, the associated
9 supplemental documents and Declaration of Service are attached hereto as "Exhibit A," and they
10 are incorporated as if fully set forth herein.

11 4. The above-described service of the Accusation was effective as a matter of
12 law pursuant to the provisions of Government Code section 11505, subdivision (c).

13 5. Business and Professions Code section 118 states, in pertinent part:

14 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
15 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
16 order of a court of law, or its surrender without the written consent of the board, shall not, during
17 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
18 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
19 provided by law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the license on any such ground."

21 6. Government Code section 11506 states, in pertinent part:

22 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
23 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
24 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
25 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

26 7. Respondent failed to file a Notice of Defense within 15 days after service
27 upon them of the Accusation, and therefore waived their right to a hearing on the merits of
28 Accusation No. 1903.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A and B, finds that the allegations, and each of them, in Accusation No. 1903 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Universal Self Care, Inc., dba Home Therapy Services Co-op has subjected its Original Pharmacy Permit No. PHY 37429 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached hereto.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board is authorized to revoke Respondent's Original Pharmacy Permit based upon the following violations alleged in the Accusation:

a. Respondent violated Business and Professions Code section 4081, and Title 16 of the California Code of Regulation section 1717(b), by aiding and abetting the failure of a pharmacy known as Sugar Free to keep prescription records on the premises and make them available for inspection during business hours.

b. Respondent Home violated Business and Professions Code section 4113(c) by failing to notify the Board within 30 days after pharmacist-in-charge Kaufman ceased to be pharmacist-in-charge on November 30, 1994.

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1 c. Respondent Home violated Business and Professions Code section
2 4113(a) by failing to notify the Board within 30 days after the designation of respondent
3 Wasserman as the new pharmacist-in charge on December 1, 1994.
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7 Attachments:

8 Exhibit A: Accusation, Case No.1903, Associated Supplemental Documents and Declaration
9 of Service

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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

UNIVERSAL SELF CARE, INC.
dba HOME THERAPY SERVICES CO-OP
13715 Burbank Boulevard
Van Nuys, CA 91401

Original Pharmacy Permit No. PHY 37429

ROSENBERG ETTIE KAUFMAN
219 N. Elm Drive
Beverly Hills, CA 90210

Original Licentiate No. RPH-33408

and

PAUL MEYER WASSERMAN
517 N. Bedford Drive
Beverly Hills, CA 90210

Original Licentiate No. RPH-14002

Respondents.

Case No. 1903

**DEFAULT DECISION
AND ORDER REGARDING
RESPONDENT UNIVERSAL SELF
CARE, INC., dba HOME THERAPY
CO-OP**

Original Pharmacy Permit number PHY 37429, heretofore issued to Respondent Universal Self Care, Inc., dba Home Therapy Services Co-op is hereby revoked.

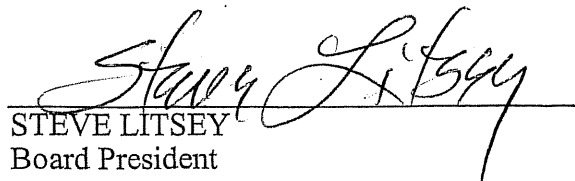
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on December 20, 2001.

It is so ORDERED November 19, 2001

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STEVE LITSEY
Board President

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 LORRIE M. YOST,
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation) NO. 1903
11 Against:)
12)
12 UNIVERSAL SELF CARE INC., dba) ACCUSATION
HOME THERAPY SERVICES CO-OP)
13 13715 Burbank Boulevard)
Van Nuys, CA 91401)
14 Original Pharmacy Permit No.)
PHY 37429)
15)
16 ROSENBERG ETTIE KAUFMAN)
219 N. Elm Drive)
Beverly Hills, CA 90210)
17 Original Licentiate No.)
RPH-33408)
18)
19 and)
20)
20 PAUL MEYER WASSERMAN)
517 N. Bedford Drive)
Beverly Hills, CA 90210)
21 Original Licentiate No.)
RPH-14002)
22)
23 Respondents.)

24 COMES NOW Complainant Patricia Florian Harris, who as
25 cause for disciplinary action, alleges:

26 **PARTIES**

27 1. Complainant is the Executive Officer of the

1 California State Board of Pharmacy (hereinafter referred to as
2 "Board") and makes and files this accusation solely in her
3 official capacity.

4 License Status

5 2. On or about June 4, 1992, Original Pharmacy Permit
6 No. PHY 37429 was issued by the Board to Universal Self Care
7 Inc., dba Home Therapy Services Co-op (hereinafter referred to as
8 "respondent Home"). Between June 4, 1992 and November 30, 1994,
9 the pharmacist-in-charge for respondent Home was Rosenberg Ettie
10 Kaufman. From December 1, 1994, and at all times relevant
11 herein, the pharmacist-in-charge for respondent Home was Paul M.
12 Wasserman. At all times relevant herein, Original Pharmacy
13 Permit No. PHY 37429 was in full force and effect. Respondent
14 Home discontinued business effective September 20, 1996.

15 3. On or about September 19, 1979, Original Licentiate
16 No. RPH 33408 was issued by the Board to Rosenberg Ettie Kaufman
17 (hereinafter referred to as "respondent Kaufman"), and at all
18 times relevant herein, said Original Licentiate No. was in full
19 force and effect.

20 4. On or about July 26, 1933, Original Licentiate No.
21 RPH 14002 was issued by the Board to Paul Meyer Wasserman
22 (hereinafter referred to as "respondent Wasserman"), and at all
23 times relevant herein, said Original Licentiate No. was in full
24 force and effect.

25 5. On or about March 10, 1994, Medical Device Retailer
26 Permit No. MDR 1272 was issued by the Board to Universal Self
27 Care, a Corp., dba Sugar Free Centers (hereinafter referred to as

1 "Sugar Free"), and at all times relevant herein, said Medical
2 Device Retailer Permit No. was in full force and effect. Said
3 Medical Device Retailer Permit was cancelled on March 29, 1996.

4 JURISDICTION

5 6. This accusation is made in reference to the
6 following statutes of the California Business and Professions
7 Code (hereinafter referred to as "Code"):

8 a. Section 4300 (formerly known as sections 4350 and
9 4359) provides that every license issued by the Board may be
10 suspended, revoked, placed on probation, or have taken
11 against it such other action as the board in its discretion
12 may deem proper.

13 b. Section 4301 (formerly known as sections 4305.5
14 and 4351) provides, in part, that the Board may take action
15 against any license holder who has engaged in unprofessional
16 conduct. Unprofessional conduct includes, but is not
17 limited to: knowingly making, or signing, any certificate,
18 or other document, that falsely represents the existence, or
19 non-existence, of a state of facts; and the violation of, or
20 aiding in, or abetting, the violation of the Pharmacy Law,
21 or any applicable federal and state law and regulation
22 governing pharmacy.

23 c. Section 4081, (formerly known as section 4232)
24 provides, in part, that the owner, officer, and partner of
25 any pharmacy or medical device retailer shall be
26 responsible, along with the pharmacist-in-charge, for
27 maintaining all records of the acquisition or disposition of

1 dangerous drugs or devices, and that all records shall be
2 kept at all times during business hours open to inspection.

3 d. Section 4113(a), (formerly known as section 4054(b))
4 provides, in part, that every pharmacy shall designate a
5 pharmacist-in-charge, and within 30 days shall notify the
6 Board in writing of the identity and license number of that
7 pharmacist and the date he or she was designated.

8 e. Section 4113(b), (formerly known as section
9 4054(b)) provides, in part, that the pharmacist-in-charge
10 shall be responsible for a pharmacy's compliance with all
11 state and federal laws and regulations pertaining to the
12 practice of pharmacy.

13 f. Section 4113(c), (formerly known as section
14 4386(b)) provides, in part, every pharmacy shall notify the
15 Board within 30 days of the date when a pharmacist ceases to
16 be a pharmacist-in-charge.

17 g. Section 4101(a), (formerly known as section
18 4386(d)) provides, in part, that any pharmacist who takes
19 charge of, or acts as pharmacist-in-charge of a pharmacy, or
20 other entity licensed by the Board, who terminates his or
21 her employment at that entity, shall notify the Board of
22 that fact within 30 days of termination.

23 h. Section 125.3 provides, in part, that the Board
24 may request the administrative law judge to direct any
25 licensee found to have committed a violation or violations
26 of the licensing act, to pay the Board a sum not to exceed

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1 the reasonable costs of the investigation and
2 enforcement of the case.

3 7. This accusation is made in reference to the
4 following regulations of the California Code of Regulations
5 (formerly the California Administrative Code), title 16:

6 a. Section 1717(b) provides, in part, that
7 information regarding the date a prescription is
8 dispensed, the name of the dispensing pharmacist, brand
9 name of the drug, and a record of each refill shall be
10 maintained for each prescription on file and shall be
11 readily retrievable.

12 FACTS

13 8. Respondents are subject to disciplinary action on
14 account of the following:

15 a. On or about April 6, 1995, Sugar Free, a
16 medical device retailer, owned by the same parent
17 corporation as respondent Home, and sharing the same
18 premises, dispensed Novolin 70/30 insulin Penfill cartridges
19 without prescription labels to Medi-Cal patient Jean P.
20 (said patient usually received 10 ml. multidose vials of
21 Novolin 70/30 insulin). Sugar Free dispensed, and billed
22 for, said items, without a pharmacist's verification, using
23 the prescription provider number of respondent Home with
24 Home's knowledge and permission. Neither respondent Home or
25 Sugar Free had a prescription on record for patient Jean P.
26 at the premises they shared. Furthermore, Sugar Free, with
27 the assistance of respondent Home, had dispensed and billed

1 for patient Jean P's prescription in this manner on a
2 monthly basis from approximately May, 1994 until May, 1995.

3 b. In response to a complaint from patient Jean
4 P., Pharmacy Inspector Quandt, on or about May 16, 1995,
5 went to the premises shared by Sugar Free and respondent
6 Home and requested pharmacy information from respondent Home
7 regarding the above transaction. Respondent Wasserman told
8 Quandt that all information pertaining to ordering and
9 billing, including that for patient Jean P., was kept at the
10 respondent home's home office in Virginia, and that no
11 records were kept on the premises. Patient Jean P's records
12 were later sent from Virginia to respondent Home's premises.

13 c. On or about May 16, 1995, Quandt was told by
14 respondent Wasserman that he had replaced respondent Kaufman
15 as pharmacist-in-charge of respondent Home on December 1,
16 1994. Quandt confirmed that, as of May 16, 1995, no
17 notification of this change had been received by the Board.

18 9. As a result of the conduct described in paragraph
19 8(a), above, respondent Home violated Code section 4301(g) by
20 aiding and abetting the knowing making of billing, and other,
21 documents which falsely represented that a prescription for
22 patient Jean P. had been dispensed by respondent Home, when in
23 fact, it had been dispensed by Sugar Free.

24 10. As a result of the conduct described in paragraph
25 8(a) and (b), above, respondents Home, Kaufman, and Wasserman
26 violated Code section 4081, and 16 CCR section 1717(b), by aiding
27 and abetting the failure of Sugar Free to keep prescription

1 records on the premises and make them available for inspection
2 during business hours.

3 11. As a result of the conduct described in paragraph
4 8(c), above, respondent Home violated Code section 4113(c) by
5 failing to notify the Board within 30 days after respondent
6 Kaufman ceased to be pharmacist-in-charge on November 30, 1994.

7 12. As a result of the conduct described in paragraph
8 8(c), above, respondent Home violated Code section 4113(a) by
9 failing to notify the Board within 30 days after the designation
10 of respondent Wasserman as the new pharmacist-in charge on
11 December 1, 1994.

12 13. As pharmacists-in-charge, respondents Kaufman and
13 Wasserman are responsible under Code section 4113(b) for the
14 violations committed by respondent Home and described in
15 paragraphs 9 through 12, above.

16 14. As a result of the conduct described in paragraph
17 8(c), above, respondent Kaufman violated Code section 4101(a) by
18 failing to notify the Board within 30 days of the termination of
19 her employment with respondent Home.

20 PRAYER

21 WHEREFORE, complainant requests that the Board hold a
22 hearing on the matters alleged herein, and that following said
23 hearing, the Board issue a decision:

- 24 1. Revoking or suspending Original Pharmacy Permit
25 No. PHY 37429, heretofore issued to respondent
26 Universal Self Care Inc., dba Home Therapy
27 Services Co-op;

2. Revoking or suspending Original Licentiate No. RPH 33408, heretofore issued to Rosenberg Ettie Kaufman;
3. Revoking or suspending Original Licentiate No. RPH 33408, heretofore issued to Paul Meyer Wasserman;
4. Directing respondents Universal Self Care Inc., dba Home Therapy Services Co-op, Rosenberg Ettie Kaufman, and Paul Meyer Wasserman to pay to the Board a reasonable sum for its investigative and enforcement costs of this action; and
5. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: 8/7/98

P. J. Harris

Patricia Florian Harris
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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